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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,571	05/20/2004	Weidong Zhu	266923-000007USPT	6579
70001	7590	03/02/2011	EXAMINER	
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CHICAGO, IL 60606-6613				
			ART UNIT	PAPER NUMBER
			2857	
			MAIL DATE	DELIVERY MODE
			03/02/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Communication Re: Appeal	Application No.	Applicant(s)	
	10/849,571	ZHU ET AL.0849	
	Examiner	Art Unit	
	Michael Nghiem	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ The Notice of Appeal filed on 10 September 2010 is not acceptable because:
 - (a) ☒ it was not timely filed.
 - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
 - (c) ☐ the appeal fee received on _____ was not timely filed.
 - (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
 - (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
 - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☒ The appeal brief filed on 12/10/10 is NOT acceptable for the reason(s) indicated below:
 - (a) ☒ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
 - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
 - (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☐ The appeal in this application is DISMISSED because:
 - (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
 - (d) ☐ other: _____.

4. ☐ Because of the dismissal of the appeal, this application:
 - (a) ☐ is abandoned because there are no allowed claims.
 - (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
 - (c) ☐ is before the examiner for consideration.

/SHARMALLA COATES/

The notice of appeal filed on 9/10/10 and the appeal brief filed on 12/10/10 defective because applicant filed an amendment on 9/9/10 as a reply to the nonfinal Office action mailed on 3/9/10, and the examiner has not issue an Office action in response to the reply. Applicant may file a notice of appeal and appeal brief only if the application is under a rejection. Applicant could have filed the notice of appeal and appeal brief if he or she didn't file the reply to the nonfinal or wait until the examiner sends out another rejection